



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

HOME RULE CHARTER MOVEMENTS IN MISSOURI WITH SPECIAL REFERENCE TO KANSAS CITY

BY JAMES W. S. PETERS, ESQ.,
Kansas City.

While in the great majority of important matters the citizens of Kansas City have home rule, the schools, police and elections are not subjects of charter regulation, but are managed under state laws. The schools are under control of a board of citizens elected by the voters of the city. Recognizing the importance of keeping the schools free from politics the two political parties by common understanding without statute requiring it, have from the very beginning of the school system established the practice that each convention of the two parties should nominate only one-half the members of this board. The schools are thus freed from the scramble by political parties and the board is never filled by men of one party alone. No contributions for political purposes are, or ever have been, exacted from teachers or other employees of the school board, and the latter has never aided any party, but is as nearly non-partisan as it can be. The same persons are re-elected to the board time and again, serving the city earnestly and without compensation. In consequence the schools and the public library, which is also under charge of the school board, are entirely satisfactory.

In the management of the police, the city has not been equally fortunate. The police department is managed under state law by a board of three police commissioners, the mayor of the city *ex officio*, and two appointed by the governor of the state. The appointees of the governor, being in no way accountable to the city, can do and generally do as they please, or as the dominant party in the state pleases they shall. The city, in Missouri, cannot control the police but the police can, and generally do, control the city.

So long as governors and police commissioners have, and cannot help but have, political predilections, it is difficult to see how

this influence can be avoided when a wink will always be as good and usually more effective than an order. The state law should permit the commissioners to be elected by the people, as is the case with the school board, leaving the citizens to work out a method of insuring and of compelling their non-partisanship.

Although the election commissioners, three in number, having control of all elections, including city elections, are appointed by the governor and regulate the matter of elections under a state law, Kansas City has been free from trouble from this source, as the men appointed on this board, though generally active politicians, and inclined to appoint party workers as judges and clerks of elections, have performed the duties of registration and election control honestly and in such manner as to disarm criticism.

In most other respects than those mentioned, Kansas City has had a large measure of home rule through its charter, framed in 1889 pursuant to provisions of the constitution of Missouri of 1875, which constitution was adopted March 24, 1875, ratified by the people October 30, 1875, and went into effect November 30th of the same year.

Under this law a city of over 100,000 population may cause a board of thirteen freeholders to be elected by the qualified voters of the city. These freeholders must within ninety days after their election submit to the mayor of the city a draft of a charter. Within thirty days thereafter this proposed charter must be submitted to the qualified voters of the city and becomes the organic law of the city if it receives in its favor four-sevenths of all votes cast at the election. Any charter thus adopted can be amended by a three-fifths vote of the qualified voters at a general or special election. Such charter must always be in harmony with and subject to the constitution and laws of the state.

The Kansas City charter of 1853, modeled after and largely copied from the then existing charter of St. Joseph, was in force, with amendments made thereto, until 1875. In the winter of 1874-5 the citizens of Kansas City, stirred up by some efforts being made by interested parties to foist upon them, through the legislature, charter amendments not to their liking, held a mass meeting of citizens, which appointed a committee of thirteen, with William Warner, then mayor of the city (now United States Senator) as chairman, to draft a new charter to be submitted to the legislature then

in session. Judge F. M. Black, one of the members of the constitutional convention, was a member of this Kansas City committee. The charter proposed was approved March 24, 1875, and was put into operation before the constitution of 1875 took effect. The idea that a committee of citizens might draft a charter for the city, complete in every detail, and submit it to the legislature for passage was a modification of the constitutional idea then being discussed in the daily press, and this charter of 1875 of Kansas City, drafted by a citizens' committee of thirteen and thus adopted, was doubtless the first exercise of this home rule charter idea, and is noteworthy in municipal history. This charter of 1875 with amendments thereto was the charter of Kansas City until 1889.

The state constitution of 1875 was at the time of its adoption much discussed by the press and aroused earnest popular interest. The records of the proceedings and debates of the constitutional convention embrace sixty volumes of about 300 pages each, showing the great care and consideration bestowed on this remarkable instrument. The provisions of the constitution authorizing cities to frame their own charters was first put into operation in St. Louis, as that city was the only one in the state at that time having even approximately the requisite number of inhabitants.

Although the constitution of 1875 gave cities the right to frame their own charters, the chief object sought to be accomplished by the framers was not the emancipation of the city of St. Louis from legislative control but to allow it to enlarge its limits and cut loose from the county, thus exempting its property from taxation for county purposes. Kansas City is still part of a county, and much of the taxation originating in its limits is diverted for county purposes, including the county tax on saloons, amounting to about \$200,000 a year, which fund is used for county roads outside the city limits. Several unsuccessful efforts have been made by Kansas City to divorce itself from the county. This could only be done by legislative enactment, and such legislation invariably meets opposition from the county representatives assisted by the country element of the legislature, always opposed to city encroachments.

August 27, 1876, the citizens of St. Louis ratified a charter proposed to them by thirteen freeholders previously elected to frame such charter for them. James O. Broadhead, who had been chairman of the St. Louis delegation in the constitutional convention, was the president of this board of freeholders.

At the time of the adoption of the constitution of 1875 Kansas City had a population of only about 50,000, and it was not until about 1887 that the city attained the requisite population of over 100,000. In order to avail itself of the constitutional provision, the friends of Kansas City succeeded, on March 10, 1887, in obtaining from the legislature an act known as the Enabling Act, providing specifically how the constitutional method might be carried out. Section 14 of this act provided that any city, for the purpose of ascertaining its population, might take a census which would be binding on all courts of the state without proof. At this time (1887) the city had increased in wealth and volume of business, and the charter of 1875 was too narrow in many ways for its growing needs, especially in matters of public improvements and parks and boulevards. The matter of granting franchises with little thought or consideration had become of importance as the old horse railways had grown into cable systems, having great political power, and earning wealth for their promoters.

Following out a general demand for something new, freeholders were nominated by the mayor and council to frame a new charter under ordinance passed May 24, 1887, and on October 4, 1887, thirteen freeholders were elected by the people. Their work was submitted to the people and rejected January 30, 1888, and by the decisive vote of 1,996 to 2,613. The influence most potent in the defeat of this charter of 1888 was that of the street railway companies. The charter proposed provided for the sale of franchises and renewals thereof at public auction to the highest bidder, and also authorized any street railway company to run its cars over the tracks of any other street railway company in the city by paying reasonable compensation under rules to be prescribed by the common council. Another stand taken by the freeholders was fought bitterly. The people in the southern part of the city were anxious for a bond issue to close up O. K. Creek sewer, a disagreeable and unhealthful open stream; the people at the other end of the city were equally anxious for a bond issue to build a city hall in their part of the city. The freeholders, imbued by the old idea that a municipality should pay as it went, refused to incorporate any bond authorization. One of the freeholders having large property interests in the O. K. Creek sewer district refused to sign the completed document and spoke and worked against it; and although the

freeholders and their advocates maintained that taxes were reduced, public improvements provided for, and a burdensome city debt positively forbidden, the proposed charter was doomed. At a meeting at Turner Hall, January 24, 1888, called by the Central Labor Union, a resolution was passed condemning the charter. Considerable feeling was engendered during the campaign, the newspapers advocating the charter, dubbing the opposition "strikers" and "boodlers," and the opposing press denominating the charter as a "silk stocking" movement and denouncing the "arrogance that would make the people take what they did not want," and commenting on the result as an "indication of the right of criticism and an indication of its power." The mistake made by the freeholders, from a practical standpoint, was their failure to take advantage of the authority given by law to present mooted or debatable questions in the alternative so that the opponents of any particular proposition might vote for or against that proposition without voting against the whole charter. The truth was that the freeholders antagonized selfish interests without inserting into the proposed charter any pet wants of the people or of any particular class. Notwithstanding the fact that the constitution itself required all special charters to provide for a bi-cameral council, this feature was urged as an objection to it. Notwithstanding the defeat of this charter it was generally felt that some more modern instrument was necessary to supplant the old charter of 1875, and an ordinance was passed October 20, 1888, providing for a special election of thirteen freeholders to draft a new charter, and on April 9, 1889, the charter prepared by them was ratified by the people by a vote of 3,493 in favor of the charter and 334 against it. There were four points which made the charter of 1889, which is our present charter, succeed where the charter of 1888 failed:

1st. Unlike the charter of 1888, the freeholders submitted alternative sections on matters concerning which there were wide differences of opinion. The voters were to decide (*a*) whether they would have \$500,000 of bonds for O. K. Creek sewer and the city hall or no bonds at all, and (*b*) whether the saloon licenses should be \$250 or \$500 a year. In order that any voter be allowed to vote on either of the above propositions it was necessary that he vote for the rest of the charter. The result was a large vote, and the charter carried with good margin.

2d. The provision of the defeated charter concerning the sale of franchises to the highest bidder and the use of its tracks by other railway companies was quietly dropped.

3d. The interest on special tax bills was reduced from 15 per cent. to 10 per cent. A provision was made for paying special assessments for grading and paving in installments.

4th. One provision that had worked against the rejected charter was the procedure for condemnation of property without due notice to parties interested. This was changed so that no condemnation proceedings could be instituted without apprising the parties in interest.

One of the innovations of the charter was the inauguration of a board of public works to have charge of the city's properties and of public work. This board consists of four members, one the president of the upper house of the common council, the other three to be appointed by the mayor and confirmed by the upper house in such a manner that not over two members of the board should be of the same political party. The organization of this board expedited public business by allowing the city engineer more time for his routine business.

Before this charter was submitted to the people it was evident that there was little or no opposition to it as it seemed to be favorably considered by all; the Commercial Club endorsed it; the bond and anti-bond people were both eager to vote for it in order to vote for or against bonds; the street railway people were content; and the saloon and brewery element determined to vote for the rest of the charter in order to insure a \$250 saloon tax.

This charter of 1889 has by the vote of the people been somewhat modified by subsequent amendments, chief among which have been the extension of the city limits; the voting of bonds for purchase of water works; and the adoption of an article inaugurating the present park system at an election held June 6, 1895, under ordinance approved April 18, 1895. The provisions of this park article were held constitutional by the Supreme Court in the case of *Kansas City vs. Ward*, 134 Mo. 172. All of these amendments were severely contested before being adopted.

On September 23, 1904, an ordinance was approved by the mayor of Kansas City providing for a special election of another board of thirteen freeholders to draft a new charter, setting the eighth day

of November, 1904, as the date for the election. This charter failed to carry March 7, 1905, by a vote of 11,156 against the charter and 9,979 for the charter. The main reason why a new charter was demanded at this time was because the existing charter failed to give the city many powers urgently needed by it, among these adequate power to condemn property for hospitals, the power to construct "septic" sewers or to furnish money to pay for them; the power to acquire outlets outside of the city for sewer purposes; to levy special assessments against railroad property; to construct viaducts, subways, cuts and tunnels needed to give adequate communication between the two Kansas cities, and between the various parts of Kansas City, Mo. Under the existing charter the city was prohibited from making a contract for more than one year. This prevented it from making satisfactory arrangement for the disposition of its garbage and its street repairs. There was also a general popular demand for local control of the police and of the liquor licenses. Under the charter of 1889 saloons are licensed and controlled by the police board.

When the Kansas City charter of 1889 was adopted by the people there was a provision voluntarily put in that charter to the effect that before an application for a license to keep a saloon should be received there must be endorsed thereon a certificate signed by the Board of Police Commissioners that such applicant had proved himself to be a person of good character. The charter also voluntarily granted to the police commissioners the right to revoke liquor licenses when it was shown that the dramshop keeper was maintaining a disorderly house. The charter of 1889 voluntarily gave over these powers to police commissioners, accountable not to the city but the state, believing at the time that it was for the best interest of the city that the saloons and police should be under one control. But as the courts decided that the propriety of issuing and revoking a license in any given case was a pure matter of discretion of the police commissioners (*ex parte* Joffe, 6 M. A. 360), it was soon discovered that these powers given to the police commissioners were whips that could be used with astounding effect on the saloon element. Power over the saloons also meant control of the breweries which in Kansas City own and manage a large proportion of the saloons. Recognizing the immense additional political power with which they had endowed this already powerful police commis-

sion, and over which the citizens of the city had no control by their votes either directly or indirectly, the people made urgent demand for some sort of a readjustment of police and saloon management, and when the charter movement in 1904 started, one of the hopes of the people was that the freeholders in framing their charter would separate the police from the saloon management by taking back for the city its right to control the licensing of saloons and vesting it in a local board or commission constituted for that purpose. Under the decision of the courts the charter could not change the control of the police commissioners over the police, as this was held to be the exclusive right of the legislature, the police being held to be state officers under the law.

As both political parties in their latest platforms had declared in favor of civil service, the proposed charter incorporated an article based on the New York Roosevelt Civil Service Act embracing all laborers, employees and officials of the city, except elective officers and specifically named members of boards and heads of departments with their confidential deputies. This department was to be under control of a bi-partisan continuing board of five to be appointed by the mayor. Competitive examinations for city service were required and it was stipulated that the person standing highest on such examination should be certified for appointment. In order to insure discipline absolute right of discharge was given to heads of departments. Provision was made for employment of laborers in the order of their applications.

New articles were also inserted concerning "city hospitals," a matter of present importance as the city is now building a large new hospital. The hospitals were, under regulations taken from the New York City charter governing the allied hospitals, to be placed under the control of a bi-partisan board of five to be appointed by the mayor, no physician or surgeon being allowed to serve on this board. A "Health and Public Charities" Department to have control of "all measures already in force and which may hereafter be adopted having for their purpose the protection of the lives and preservation of the health of the inhabitants of the city," was to be under the charge of another continuing board of five citizens to be appointed by the mayor, two to be licensed physicians, one a veterinary surgeon, and the two remaining members, the mayor and chief of police *ex officio*.

The Hospital Department was to have charge and control of "all provisions which have been made and which may hereafter be made of all property, institutions and instrumentalities which are now owned or controlled and which may hereafter be owned or controlled by the city for the care and treatment of the sick and injured." In addition to these three entirely new articles incorporated into the new charter, a street cleaning article was adopted, providing adequate arrangements for the cleaning of the city's streets by setting apart 7 per cent. of the city's general revenue for that particular purpose, and distributing the work over the city in proportion to the taxes paid by each district of the city.

The charter proposed concentrated responsibility and the appointing power in the mayor instead of requiring the appointments to be confirmed by the upper house of the common council, as is the case in our present charter. Following the best systems of municipal accounting, it corrected the present lack of central direction and control and of correlation in the accounts of the different departments, the lack of proper safeguards in the charging up of assets and revenues, and provided for one account which should exhibit the financial condition of the city at any time. It also introduced uniformity in all the accounts and fixed responsibility on the officer responsible therefor. The whole charter was built on the theory of definitely locating responsibility so that the people might know whom to praise or blame in every department.

The leading reasons why this charter of 1905 was rejected were:

1. While no outspoken opposition was made to the civil service article, on account of the fact that both political parties had previously declared themselves in favor of civil service reform, the charter was quietly and with unanimity opposed by "politicians" of both parties and their "friends." The first board of civil service commissioners was named in the charter itself, which aroused some further opposition.

2. The proposed charter provided a board of three, to be appointed by the mayor, to have charge of the granting and revoking of saloon licenses to supplant the control of saloons then possessed by the Board of Police Commissioners appointed by the governor. It is probable that the police department and saloons were opposed to this provision as a unit.

3. The saloon and brewery element also opposed the charter because of the following provisions:

"It shall be the duty of the board to enter of record an order withdrawing any certificate given by it on which a license has been issued by the city auditor, whenever requested so to do, in writing, filed with the secretary more than twenty days before such license will expire, by two or more resident real estate owners in the block where the saloon so licensed is located, or whenever, for any cause, such board shall see fit to do so; and it shall then be necessary for such licensee to make a new application for license and obtain a new certificate from said board before another license can be issued to him."

The saloon element and the brewery interests claimed that this clause put it into the power of two real estate owners to peremptorily take away their licenses; while the charter advocates maintained that such real estate owners could by virtue of this article only cause the saloon keeper to appear and make his showing that he was conducting a reputable saloon.

4. Many large property owners opposed the charter because it took away the 6 per cent. rebate for prompt payment of taxes that existed in previous charters.

5. The labor unions (not as a body, but as individuals) opposed the charter because they had no representation on the board of freeholders, and for the further reason that the charter did not provide for the initiative, the referendum and the recall, and also for the reason that it granted to the common council "the power to license, tax and regulate all trades, professions, pursuits or employments not hereinbefore enumerated, of whatever name or character, like or unlike, and fix the amount of license tax to be paid thereon," which they maintained would be a tax on the shovel and the dinner pail.

6. A large number of influential lawyers voted and quietly worked against the charter for the reason that it made such extensive changes in the special tax bill system for public improvements, a system which they argued had cost thousands of dollars to have interpreted by the courts, and because the provisions proposed as substitutes or changes in many other sections were "experimental."

7. The charter proposed a system of hospital management, putting this department in charge of a bi-partisan board of five and named the first incumbents in the charter itself. This hospital act

was opposed by some of the physicians for fear lest this or that man or faction might obtain control of the clinics to their disadvantage.

8. Many objected to the proposed charter for the reason that it gave too much power to the mayor, and might assist him in building up a local political machine, and argued that the appointing power in city government should be distributed.

9. The charter of 1889 provided that corner lots as well as inside lots should be taxed for special improvements, such as paving, sidewalks, etc., according to frontages on the improvements. An attempt to relieve these corner lots from part of this taxation received opposition from owners of lots not so situated and also from corner lot owners who had already paid for similar improvements on the old plan.

10. Objections were made to the charter because it provided for too many boards. In addition to the board of public works and of parks and boulevards in the existing charter, the proposed charter provided for boards of citizens to have charge of hospitals, fire departments, civil service, health and public charities and dramshops respectively. As in the case of the existing park board, all of the members of these boards were to serve without compensation except the members of the boards of public works, of dramshops and of civil service. To safeguard these boards from being used as political machines, the charter provided for representation on these boards of more than one political party, and in the case of the dramshop board, it was provided that not more than one of the three members should be of the same political party as the appointing mayor. All of the boards except the dramshop board were to be continuing boards so that there should always be on the board some old members having knowledge of its duties when a new member superseded an old.

In presenting this proposed charter to the people, the freeholders did not offer any alternative sections, as they were authorized to do under the law. It is probable that if the changes concerning saloon management and the civil service article had been so put that the voter might accept or reject either of these questions without voting against the whole charter, not only the charter, but also these provisions might have carried.

In framing the defeated charter of 1905 the freeholders were

influenced by the "municipal program" or model charter of the National Municipal League. It is probable that a study of the charter proposed by them will show that it approaches more nearly the principles advocated by this body than any other city charter.

After the draft of the charter had been put into the hands of the mayor, over 8,550 copies were distributed to the citizens of Kansas City by a committee of fifty citizens appointed by the freeholders for the purpose of putting the proposed charter properly before the voters. This committee did active and enthusiastic work in favor of the charter.

The charter of 1905 received the unanimous support of the Kansas City press. As the day when the charter was to be submitted to the people approached, the newspapers published from day to day, able editorials covering the whole charter in detail. The provision changing the control of the saloons from the police commissioners and vesting it in a locally appointed board, received the especial support of one of the newspapers. After the defeat of the charter this paper at once actively advocated Sunday closing of the saloons. The police commissioners, newly appointed by our present governor, recognized this popular demand and issued orders to that effect, which have since been strictly observed. The charter was endorsed by the Commercial Club, the Real Estate Exchange and other business organizations. The work done by the opposition was done quietly, and few if any public speeches were made by those chiefly interested in its defeat. Although the charter suffered defeat, its friends refused to accept the result as final. The committee of fifty, who had engineered the charter campaign, on March 15, 1905, determined to confer with the various commercial and industrial associations of the city in furtherance of a new charter movement, endeavoring to bring about a harmonious and united effort for the adoption of the charter which had been proposed with such changes therein as might be advisable for the best interests of all the people of Kansas City. Following this effort various associations of the city appointed representatives to confer with them, and such pressure was brought to bear by these influences that on September 11, 1905, an ordinance was approved setting October 24, 1905, as the date for a special election to select another board of freeholders to frame a charter. While the matter was pending, the city comptroller called attention to the fact that the election incident

to this charter movement would cost approximately \$60,000 and that there were no available funds to meet this outlay. Taking this into consideration in connection with the fact that a general election for city officers will be held next March, the common council, believing it would be inadvisable to inject further charter discussion into the midst of this regular city campaign, on September 23, 1905, repealed the ordinance providing for the election of charter freeholders. Another ordinance providing for the election of thirteen freeholders to frame a charter to be elected at the general city election next March is now pending.

Although the charter of 1905 was defeated, the thirteen freeholders who without compensation gave up their whole time for three months to the drafting of the charter should not feel that their work was in vain. The people have been aroused to questions brought out by charter discussion, the settlement of which in the right way will be of inestimable benefit. A charter embodying in tangible form the ideas of thirteen citizens as to the provisions which they believe will be for the best interests of the city has been worked out to the smallest detail and with the greatest care. On this basis freeholders may build a more satisfactory and better charter. Such charter, when adopted, will doubtless be one both practical and scientific; a valuable aid to the right development not only of Kansas City but also of other American cities.